

Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use  
Educational Ownership/Use

NORTHEAST ILLINOIS DISTRICT	)	Docket No.(s)	93 L 50472
COUNCIL OF CARPENTERS	)		On Remand
APPRENTICE AND TRAINEE	)		from the
PROGRAM	)		Circuit Court
	)		of Cook
Applicant	)		County
	)		(89-16-1369)
	)		
	)	PI No.	08-34-200-019-0000
	)		
v.	)		
	)		
THE DEPARTMENT OF REVENUE	)	George H. Nafziger	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

APPEARANCES: Attorneys Craig A. Burman and Gary A. Weintraub appeared on behalf of the Northeast Illinois District Council of Carpenters Apprentice and Trainee Program (hereinafter referred to as the "Applicant"). Attorney Paul A. Millichap appeared on behalf of Intervenor, Community Consolidated School District 59 and Township High School District 214 (hereinafter referred to as the "Intervenor").

Did the Applicant qualify for exemption as a school during the 1989 assessment year? Did the Applicant own the parcel here in issue and the approximately 65,000 square foot one-story building and parking lots

located thereon, during the 1989 assessment year? Was the parcel here in issue and the building and parking lots located thereon, used for school purposes during the 1989 assessment year? Following the submission of all of the evidence and a review of the record, it is determined that the Applicant did not qualify as a school during the 1989 assessment year. It is further determined that the Applicant did own the parcel here in issue and the building and parking lots located thereon, during the 1989 assessment year. Finally, it is determined that this parcel and the building and parking lots located thereon, were not used for school purposes by the Applicant during the 1989 assessment year.

FINDINGS OF FACT: A hearing was held at 100 West Randolph Street, Chicago, Illinois, on November 16, 1992, to determine whether or not Cook County parcel No. 08-34-200-019-0000 should be exempt from real estate tax for the 1989 assessment year. On May 20, 1993, the Director of Revenue issued a final administrative order, determining that since the Applicant had failed to comply with the notice provisions of Section 119 of the Revenue Act of 1939, the Illinois Department of Revenue (hereinafter referred to as the "Department"), lacked jurisdiction to consider the Applicant's request for exemption. The Applicant then appealed, pursuant to the Administrative Review Law, to the Circuit Court of Cook County. The Department subsequently changed its policy concerning its position with regard to applicants who had not complied with the notice provisions of Section 119 of the Revenue Act of 1939. When this change was brought to the attention of the Court considering this case on Administrative Review, the Judge ordered this matter remanded to the Department, for the purpose of holding a hearing de novo on the merits of the matter. That order also provided that the notice of said hearing de novo should be given in accordance with Section 119. Prior to the hearing held on November 21, 1994, notice was given in compliance with Section 119, and Community

Consolidated School District 59 and Township High School District 214, two of the parties noticed pursuant to Section 119, appeared at the hearing, and were allowed to intervene and participate in this proceeding.

The Applicant was established by a declaration of trust, pursuant to a collective bargaining agreement on June 1, 1965. Said trust was restated and reexecuted on November 12, 1974. The board of trustees of this trust, during 1989, consisted of eight trustees. Four of those trustees were union trustees, and four of the trustees were contractors' trustees. In the case of a deadlock, the trustees were authorized to appoint an impartial trustee, who was empowered to participate in the trustees' activities only on issues on which the four union trustees and the four contractors' trustees were deadlocked.

During 1989, the employers of carpenters who were subject to Applicant's collective bargaining agreement, paid 17 cents per hour for every hour worked by a member of the carpenter's union, to this trust fund.

The Applicant acquired the parcel here in issue by a quitclaim deed on September 15, 1986. During 1989, said parcel was improved with a one-story brick and metal building, containing approximately 65,000 square feet. Adjoining this building on the east and the west sides, and also located on this parcel, were two parking lots, which during 1989, were used for parking for students, teachers, and administrative personnel of the Applicant. During 1989, the building on this parcel included a pre-apprenticeship training area, a millwright shop, a welding lab, a millwork area, an area used by the lathers, a floor covering area, a concrete forms construction area, carpentry shops, a stair construction area, a rafter construction area, a general office area, a lunchroom, and restrooms.

During 1989, approximately 1,600 persons attended the pre-apprentice and apprentice training programs, conducted by the Applicant at the building on this parcel. This building served a region in northeastern

Illinois, which included Cook, Lake, DuPage, McHenry, Kane, Kendall, Grundy, Iroquois, and Kankakee Counties.

During 1989, all of the students first took the pre-apprentice course. This was a 12 week, eight hours per day intensive training course. During that time, approximately one-third of the day was spent in the classroom and two-thirds of the day was spent in the shop. At least the first three weeks of the classroom work included improving the math skills of the students. The shop work in the pre-apprentice program was designed to introduce the students to the major divisions of carpentry. After completing the pre-apprentice course, the students were required to join the union, go out and get a job as a carpenter's apprentice with a union contractor, and to pay union dues. They then returned to the building on this parcel for one week of instruction and training during each of the following 11 quarters. If they could not find a job, they could not proceed in the apprentice program. During 1989, one-fourth of the persons enrolled in the pre-apprentice program received their training at Washburne Trade School, a post-secondary vocational school operated by the Board of Education of the City of Chicago. During that year, the other three-quarters of the persons enrolled in the pre-apprentice program received their pre-apprentice training at the building on the parcel here in issue.

During 1989, all of the apprentice training was conducted in the building on this parcel. The apprentice training included a ten-hour OSHA course. It also included Interior Systems I and II, and how to hang drywall. Also, the apprentices learned to construct stairs, to frame a roof, how to do interior and exterior trim, among other things.

Applicant's admission requirements for the pre-apprentice program during 1989, stated that a person must have completed two years of high school (eight credits). A person applying for the pre-apprentice program must also be at least 17 years of age, physically fit to do the work, and

have a valid social security card. During 1989, Applicant accepted applications for its program from any of the following referral agencies: the Chicago Board of Education, Washburne Trade School, Apprentice Information Centers, local unions, contractors, employing union carpenters, and the Illinois Job Service.

During 1989, persons who completed Applicant's pre-apprentice and apprentice programs, received a certificate from the U.S. Department of Labor stating they had completed these programs, and also a journeymen's certificate from the United Brotherhood of Carpenters.

Other than mathematics, Applicant's program did not teach any courses commonly found in common schools such as history, sociology, English, etc. After a person completed the pre-apprentice program, they were required to join the carpenters union and obtain a job as a carpenter's apprentice with a union contractor to continue their training. In the first year of apprentice training, a person was required to complete the schooling component of 15 hours and at least 1,200 hours of on-the-job training. In the second year, a person was required to complete a schooling component of 15 hours, and also have the required amount of on-the-job training. The same was also true of the third and fourth years.

During the years 1965 through 1987, the entire general program which the Applicant presented at the building on the parcel here in issue, was presented at Washburne Trade School. No evidence was offered that when the entire general program was taught at Washburne Trade School, that persons who successfully completed the course were awarded a diploma, or a degree.

1. Based on the foregoing, I find that the Applicant owned the parcel here in issue and the building and parking lots located thereon, during all of the 1989 assessment year.

2. I also find that the Applicant is a trust established pursuant to a collective bargaining agreement between the carpenter's union and the

contractors.

3. During 1989, said trust, I find, was funded by the payment by the contractors of 17 cents per hour for each hour worked by a member of the carpenter's union, for one of the contractors.

4. While the pre-apprentice and apprentice programs presented by the Applicant in the building on the parcel here in issue during 1989, had previously been presented at Washburne Trade School operated by the Chicago Board of Education during the years 1965 through 1987, I find that it was not established that the Chicago Board of Education was under a governmental duty to provide that training.

5. Also, it should be pointed out that during 1989, the persons receiving training at the building on this parcel included not only persons residing in the area served by the Chicago Board of Education, but the remainder of Cook County and eight other northeastern Illinois counties, as well.

6. During 1989, I find that one-fourth of the pre-apprentice program participants received their training at the Washburne Trade School, while three-fourths of said pre-apprentice program participants received their training at the building on the parcel here in issue.

7. I find that no evidence was offered that any sort of degree was awarded by the Chicago Board of Education, upon completion of this training, when it was offered at Washburne Trade School.

8. The only general education course offered by the Applicant and Washburne Trade School, as a part of the pre-apprentice training during 1989, I find, was mathematics.

9. After a person completed the pre-apprentice program, I find, that said person was required to join the union, and find a job with a union contractor to be allowed to continue their training by taking the apprentice program.

10. Upon completion of the apprentice training course during 1989, the person received a carpenter's union journeyman's card.

11. I find that while Washburne Trade School was a post-secondary school operated by the Chicago Board of Education, Applicant's admission requirements for the pre-apprentice program only required two years of high school (eight credits).

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.1 exempts certain property from taxation in part as follows:

"...and including the real estate on which the schools are located...not leased by such schools or otherwise used with a view to profit,...."

35 ILCS 205/19.16 exempts certain property from taxation in part as follows:

"Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided...and owned by any...school...which meets the qualifications for exemption."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1941) and *People ex rel. Lloyd v. University of Illinois*, 357 Ill. 369 (1934).. Finally, in ascertaining

whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); *Girl Scouts of DuPage County Council, Inc. v. Department*, 189 Ill.App.3d 858 (2nd Dist. 1989); and *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986).

The Supreme Court, in applying the language of Article IX, Section 6, of the Illinois Constitution concerning schools, to the provisions of Section 19.1 of the Revenue Act of 1939, (now 35 ILCS 205/19.1), has over the years developed a two-part test.

In *People ex rel. McCullough v. Deutsche Gemeinde*, 249 Ill.132 (1911), at page 137, the court stated as follows:

"A school within the meaning of the constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning which would make the place a school in the common acceptance of the word."

In *People ex rel. Brenza v. Turnverein Lincoln*, 8 Ill.2d 188 (1956), citing a Minnesota case, the court said:

"It seems clear from the foregoing that this constitutional tax exemption for private educational institutions was intended to extend only to those private institutions which provide at least some substantial part of the educational training which otherwise would be furnished by the various publicly supported schools...which to such extent, thereby lessen the tax burden imposed upon our citizens as the result of our public educational system."

The case of *People ex rel. Brenza v. Turnverein Lincoln* involved an organization which only taught swimming and gymnastics. At page 202, the Court stated:

"In the ordinary school, physical education is a part, but only a part of the curriculum. And while instruction in swimming and gymnastics is educational in a broad sense, it is not sufficient, standing alone, to bring an institution within the scope of our statute,...."

In *Coyne Electrical School v. Paschen*, 12 Ill.2d 387 (1957), the Court reaffirmed these two tests and the decisions in the previously cited cases,



and stated as follows:

"On the basis of the foregoing decisions it is manifest that two things are necessary to qualify a private institution for tax exemption as a school: first, a course of study which fits into the general scheme of education founded by the State and supported by public taxation; second, a course of study which substantially lessens what would otherwise be a governmental function and obligation."

Concerning the first test, the only course taught by the Applicant as a part of its curriculum which falls into the general scheme of education funded by the State, is mathematics.

Concerning the second test of reducing the burdens of government, the attorney for the Applicant points to the fact that both the pre-apprentice program of the Applicant and the apprentice program of the Applicant had previously been taught at the Washburne Trade School, a post-secondary school operated by the Chicago Board of Education, and further, that the pre-apprentice program was still taught there during 1989. However, the Applicant did not establish that the Chicago Board of Education had been required to offer these courses, resulting in a lessening of the burdens of government, when the Applicant took over teaching those courses. It should also be pointed out, that at the building on the parcel here in issue, the Applicant offered these courses to persons from eight northeastern Illinois counties, as well as to persons living in Cook County outside of the area served by the Chicago Board of Education. This most certainly did not lessen the governmental burden on the Chicago Board of Education.

In *Winona School of Professional Photography v. Illinois Department of Revenue*, 211 Ill. App.3d 565 (1st Dist. 1991), the Court determined that a school of photography owned by a professional trade association, Professional Photographers of America, did not qualify as a school. The Court went on to state again the two tests set forth in the *Coyne* case, first does the Applicant teach a course of study which fits into the general scheme of education and second, is the course of study, one which

would otherwise be a governmental function. See also *American College of Chest Physicians v. Department of Revenue*, 202 Ill. App.3d 59 (1st Dist. 1990).

The attorney for Applicant, in his brief, cites several sections of the school code (105 ILCS) for the proposition that public schools may offer vocational training. However, the portion of 105 ILCS 5/27-22.2, cited in his brief, makes it clear that vocational training for high school diploma purposes is an elective to be included along with other prerequisites for a diploma.

Since the Applicant offers no common school courses other than mathematics and since no credit is given for taking Applicant's training by any schools, I conclude that Applicant's training does not qualify as a substantial part of the courses offered in the public schools.

Applicant's attorney, in his brief, cited 110 ILCS 205/9.07b as expressing a clear mandate for post-secondary vocational education. However, this provision merely establishes a committee to develop course and curricula to meet college and State university admission standards by 1993. This is not a "clear mandate", as alleged by the Applicant.

In referring to the Public Community College Act, the Court in *Winona* pointed out that in the establishment of technical or vocational programs, the Act mandated a comprehensive program, including courses in liberal arts and sciences and general education. The Court, in that case, went on to point out that *Winona* offered no general education courses. The Applicant, in this case, only offers mathematics.

The attorney for the Applicant, in his brief, also cited 105 ILCS 5/10-22.22a, which authorizes school boards in areas designated by the State Board of Education as areas of above the average statewide dropout rate and areas of high youth unemployment, to establish pre-apprenticeship vocational programs. However, the evidence in this case did not establish

that any portion of, or all of, the nine-county area served by the Applicant's pre-apprentice program located in the building on the parcel here in issue, met the foregoing qualifications.

Even if one assumes for a moment without admitting that the pre-apprentice program might qualify, the building on this parcel was also used for the apprentice program, which required a person in the program to join the union, and be employed by a union contractor. A review of the floor plan of the building on this parcel (Dept. Ex. 4B Hearing held 11/16/92), clearly shows that most of the building was used for the various carpenter's apprentice trades program. Also, it was not established that the areas identified as pre-apprentice, were exclusively used in the pre-apprentice program.

Where a property as a whole was used for both exempt purposes and nonexempt purposes, the property will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is merely incidental. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59 (1971); *Sanitary District v. Carr*, 304 Ill. 120 (1922); and *Metropolitan Sanitary Dist. v. Rosewell*, 133 Ill.App.3d 153 (1st Dist. 1985). It is clear from the foregoing, that this property does not qualify for exemption as the clearly nonexempt use, the apprentice program was the primary use.

The attorney for the Applicant, at page two of his brief, points out that the Applicant has been determined by the Department, to be exempt from retailers' occupation tax as being organized for educational purposes. However, the Illinois Courts have held that exemption from federal income tax and state sales tax is not determinative of whether or not property qualifies for exemption from property tax. *People ex rel. County Collector v. Hopedale Medical Foundation*, 46 Ill.2d 448 (1970); and *In re Application of Clark v. Marion Park*, 80 Ill.App.3d 1010 (2nd Dist 1980). It should also be pointed out that the Applicant is exempt from federal income tax,

pursuant to Section 501(c)(5) of the Internal Revenue Code, which exempts the following:

"Labor, agricultural or horticultural organizations,"

I conclude, based on the foregoing, that the Applicant owned the parcel here in issue and the building and parking lots located thereon. I further conclude that the Applicant has failed to establish that it qualified as a school, during the 1989 assessment year. Finally, I conclude that the Applicant has failed to establish that it used the parcel here in issue and the building and parking lots located thereon, for school purposes, during the 1989 assessment year.

I therefore recommend that Cook County parcel No. 08-34-200-019-0000 remain on the tax rolls for the 1989 assessment year, and be assessed to the Applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

July , 1995